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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,890	07/28/2003	Joseph S. Bieganeck	249.304	3853

28785 7590 06/30/2004

JOHN R LEY, LCC
5299 DTC BLVD, SUITE 610
GREENWOOD VILLAGE, CO 80111

EXAMINER

GUADALUPE, YARITZA

ART UNIT PAPER NUMBER

2859

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/628,890

Applicant(s)

BIEGANEK ET AL.

Examiner

Yaritza Guadalupe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3 – 27 are rejected under 35 U.S.C. 102 (b) as being anticipated by Silverman et al. (US 4,998,354).

Silverman discloses an apparatus for measuring the contour of a human for a custom seat cushion comprising a clearance measurement device / compressible element (18, 20) used for evaluating the contour of an anatomical portion, by applying pressure to an upper surface of the compressible elements by a person sitting on the surface, evaluation indicators (24) which will show the displacement caused by the compressible element bone the pressure is applied on the surface. Silverman further discloses the use of a foam / putty –like substance as the compressible material (See Column 3, lines 56 – 60) capable of collapsing up to 90 % of its initial thickness.

With respect to the method as stated in claims 1 – 27 : the method of evaluating clearance between a support contour of a seat cushion comprising the steps of selecting a clearance measurement device which deforms in response to force applied thereto (See Column 5, lines 1 – 16); locating the clearance measurement device on the support contour at a predetermined location where the clearance is to be evaluated; sitting the person on the cushion with the clearance measurement device located between the anatomical portion and the support contour at the predetermined location where the clearance is to be evaluated; and evaluating the clearance at the predetermined location by determining the extent to which the clearance measurement device was deformed as a result of the person sitting on the cushion with the anatomical portion adjacent to the support contour at the predetermined location (See Column 5, lines 27 – 38) as stated in claims 1 – 27 will be met during the regular operation of the device disclosed by Silverman.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are considered of relevance to the present application :

- a. Tadin (US 6,625,897)

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- b. Lee et al. (US 6,293,026)
- c. Tadin (US 6,493,958)
- d. Silverman (US 4,615,856)
- e. Brubaker (US 5,470,590)
- f. Mead (US 2,472,754)
- g. Wempe (US Pub. No. 2003/0121103)
- h. Wempe (US Pub. No. 2001/0013146)
- i. Pedrow (US 4,756,090)

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe whose telephone number is (571)272 -2244. The examiner can normally be reached on 9:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Yaritza Guadalupe
Patent Examiner
Art Unit 2859
June 25, 2004



DIEGO F.F. GUTIERREZ
SUPERVISOR PATENT EXAMINER
TECHNOLOGY CENTER 2800

CHRISTOPHER W. FULTON
PRIMARY EXAMINER